86 - 1152

NO.

Supreme Court, U.S.
FILED
JAN 13 1987
JOSEPH F. SPANIOL, JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1986

JAMES M. GEORGE
and MARGARET C. GEORGE, et al.
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

F. KELLEHER RIESS
3900 North Causeway Boulevard
1310 One Lakeway Center
Metairie, Louisiana 70002-1729
(504) 832-0999
Counsel for Petitioner

14 pp

QUESTION PRESENTED

Whether a corporate agent used by a partnership to hold legal title to the partnership's property -- as required by lenders to comply with State usury laws -- is taxable on income the agent receives on behalf of its principal (but earned exclusively by the partnership/principal), solely because the agent is owned by some of the partners.

The United States Tax Court and the Sixth and Federal Circuits read this Court's decision in National Carbide Corporation v. Commissioner, 336 U.S. 422 (1949), as saying no. The Fourth and Fifth Circuits read the same decision as saying yes.

LIST OF PARTIES

JAMES M. GEORGE and MARGARET C. GEORGE
Lumberton, Mississippi

HOLLIS O. GRAHAM and IDA G. GRAHAM
Ruston, Louisiana

GEORGE A. WOLCOTT and DOROTHY WOLCOTT
Houston, Texas

TUNCAY ERTAN and NONA G. ERTAN
Alexandria, Louisiana

ESTATE OF COMAN S. NORTON, Deceased,
CAROLINE NORTAN,
Testamentary Executrix
Baton Rouge, Louisiana

ROLAND M. TOUPS and KATHRYN B. TOUPS
Baton Rouge, Louisiana

DAVID R. CARPENTER
and ERICA J. CARPENTER
Baton Rouge, Louisiana

CHARLES A. PRINCE and RUTH O. PRINCE
Alexandria, Louisiana

HARRY R. LAYNE and JANET J. LAYNE
Covington, Louisiana

STEPHEN G. ABSHIRE and MARY B. ABSHIRE
Lafayette, Louisiana

JANET F. BAUM, Formerly JANET F. NORTON
Baton Rouge, Louisiana

KENNETH G. FINK, JR. and CAROL FINK
Denham Springs, Louisiana

DONALD L. McCOLLISTER and
SANDRA M. McCOLLISTER
Baton Rouge, Louisiana

ROBERT A. RAYFORD and IRIS B. RAYFORD
Pineville, Louisiana

FREM F. BOUSTANY, SR. and
BEATRICE J. BOUSTANY
Lafayette, Louisiana

FREM F. BOUSTANY, JR. and
ANGELL F. BOUSTANY
Lafayette, Louisiana

SIDNEY FREDERICK and
IRENE S. FREDERICK
Lafayette, Louisiana

ROLAND M. TOUPS and KATHRYN B. TOUPS
Baton Rouge, Louisiana

STATEMENT OF INTERESTED PARTIES

GARY R. FRINK and SHERRY R. FRINK
Luray, Virginia

JOE B. CLARKE, JR.
Lafayette, Louisiana

COMPREHENSIVE PLANNING ASSOCIATES, INC.
Mandeville, Louisiana

PHOPHO COSMAS
San Rafael, California

DONALD G. EDGERTON
Alexandria, Louisiana

WILLIAM G. EMERSON
Carencro, Louisiana

JOSEPH W. GAITREAU
Baton Rouge, Louisiana

GAYLE L. GALLOWAY
Lafayette, Louisiana

M. L. GODLEY
Lecompte, Louisiana

JAMES D. HARDWICK
Alexandria, Louisiana

JAMES W. HARRINGTON
Morgan City, Louisiana

LAKEWAY MANAGEMENT COMPANY
Metairie, Louisiana

FRANK E. LANIER
Hammond, Louisiana

LASSCO, INC.
Mandeville, Louisiana

ESTATE OF LEE McCORMICK
Monroe, Louisiana

LYNN ALAN MEADOWS
New Iberia, Louisiana

MID-STATE SAND & GRAVEL CO., INC.
Alexandria, Louisiana

FRANCIS W. MORIARTY
Lafayette, Louisiana

JUDGE EDMUND REGGIE
Crowley, Louisiana

DELLA ROBIN
Baton Rouge, Louisiana

PETRO J. ROUSSOS
Theodore, Alabama

CHARLES L. SCOTT
Jackson, Mississippi

DARRYL TSCHIRN
New Orleans, Louisiana

NATHAN L. WISE
Jackson, Mississippi

JOHN C. and DESPINA COSMAS YEMELOS
Manalapan, Florida

TABLE OF CONTENTS

PAGE

QUESTION PRESENTED i
LIST OF PARTIES ii
STATEMENT OF INTERESTED PARTIES iv
TABLE OF CONTENTS vi
TABLE OF AUTHORITIES vii
OPINIONS BELOW 2
JURISDICTION 2
COMPANION CASES 3
STATEMENT OF THE CASE 4
APPENDIX:
VOLUME I
A - Frink v. Commissioner,
Fourth Circuit, Aug. 8, 1986 ... 1a
B - Frink v. Commissioner,
Fourth Circuit, Rehearing
Denied, Sept. 16, 1986 ..... 18a
C - George v. Commissioner,
Fifth Circuit, Oct. 24, 1986 ... 20a
D - George v. Commissioner,
Fifth Circuit, Rehearing
Denied, Dec. 2, 1986 ..... 44a
E - Bollinger v. Commissioner,
Sixth Circuit, Dec. 2, 1986 .... 46a
VOLUME II
F - Frink and George v. Comm'r.,
Tax Court, Dec. 27, 1984 ..... 62a
G - Bollinger v. Commissioner,
Tax Court, October 18, 1984 ... 137a

TABLE OF AUTHORITIES

Frink v. Commissioner,
49 T.C.M. (CCH) 386 (1984),
rev'd 798 F.2d 106 (4th Cir.
1986) ..... passim

George v. Commissioner,
49 T.C.M. (CCH) 386 (1984),
rev'd 803 F.2d 144 (5th Cir.
1986) ..... passim

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1986

JAMES M. GEORGE
and MARGARET C. GEORGE, et al.
Petitioners,

v.

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Petitioners, James M. George and Margaret C. George, et al., respectfully pray that this Court issue a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit, entered in the above entitled proceedings on October 24, 1986.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit is reported at 803 F.2d 144, and is reprinted in the Appendix hereto as Appendix C.

The Memorandum Decision of the United States Tax Court entitled Frink v. Commissioner (from which this case was appealed) has been unofficially reported at 49 T.C.M. (CCH) 386 (1984), and has been reprinted herein as Appendix F.

JURISDICTION

The decision of the United States Court of Appeals for the Fifth Circuit was issued on October 24, 1986 (Appendix C) and petitioner timely sought rehearing. The Petition for Rehearing was denied on December 2, 1986 (Appendix D).

The Jurisdiction of this Court to review the Judgment of the Fourth Circuit is invoked under 28 U.S.C. Sec. 1254(1).

COMPANION CASES

A petition for issuance of a writ of certiorari to the United States Court of Appeals for the Fourth Circuit captioned Frink v. Commissioner of Internal Revenue, filed on even date hereof, arises from the same matter that gives rise to this petition. Petitioners here and petitioners in the Frink case were all petitioners in Frink, et al. v. Commissioner decided by the United States Tax Court on December 27, 1984 (Appendix F), from which appeals were taken to the Fourth Circuit (in which the Frink petitioners reside) and the Fifth Circuit (in which petitioners here reside).

The United States Court of Appeals for the Sixth Circuit in Bollinger v. Commissioner, No. 85-1825, Decided December 2, 1986, (Appendix E) on indistinguishable facts, came to a clearly opposite decision from Frink and George. The trial attorney for the Department of Justice has informally advised that the government will not file a petition for rehearing in Bollinger and, further, that the Solicitor General has not yet

reached a decision as to whether a petition for a writ of certiorari will be filed in this Court in Bollinger, or whether he will acquiesce to the petition for writs in Frink and George.

STATEMENT OF THE CASE

This case is the companion case to Frink v. Commissioner, decided by the Fourth Circuit Court of Appeals on August 8, 1986 (Appendix A). A petition for writ of certiorari is being filed in that case simultaneously with the instant petition. That case and this have the same Appendix. The taxpayers in the Frink case and the taxpayers in the instant case were all partners in the same partnership. Because the issues are the same in both cases, petitioners here incorporate by reference the facts and arguments set out in the Frink petition.

If certiorari is granted in the **Frink** case, it should be granted in the instant case also, and the cases should be consolidated.

Respectfully submitted,

F. KELLEHER RIESS
3900 North Causeway Boulevard
1310 One Lakeway Center
Metairie, Louisiana 70002-1729
(504) 832-0999

Counsel for Petitioners